

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST) NO.16068 OF 2007.

Shri Kisan Kotu Date & Anr. ...Appellants

Versus

Bhau Nivrutti Date & Anr. ...Respondents

Shri S.A.Sawant for the Appellants.

Shri S.H.Dixit with Shri R.M.Hailkar for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : 04th December, 2007.

JUDGMENT:

1. I have heard learned counsel appearing for the appellants and the learned counsel appearing for the respondents. The appellants are the original defendants and respondents are the original plaintiffs. The appellants-defendants claim to be the owners of the suit property bearing Survey No.182/16 and 182/20 (Gat No.834 and Gat No.833). The original plaintiff No.1 is the mother of the original plaintiff Nos.2 to 4 (respondent Nos.1 to 3 herein). The 1st and 2nd defendants (appellants herein) are real brothers. The 3rd defendant was one Sonu Bhika Date, who died during the pendency of the suit. According to the case of the respondents-plaintiffs, the name of the 3rd defendant was entered in the revenue records as a manager. It is their case that the 3rd defendant was not cultivating

the suit land and the suit lands have been under their cultivation. It is contended that name of the 1st defendant (1st appellant herein) was entered in cultivation column behind the back of the respondents. It is alleged by the respondents that the appellants by taking undue advantage of the entries in the record of rights are bent upon harassing the respondents. After giving a notice to the first appellant, the respondents filed a suit for perpetual injunction restraining the appellants from obstructing peaceful possession of the respondents over the suit property.

2. It is the contention of the respondents that during the pendency of the suit they were dispossessed by the appellants. Therefore, an amendment was made to the plaint and a decree of possession was sought.

3. The suit was contested by the appellants by filing written statement. It is the case of the appellants that the suit lands and land bearing Survey No.182/13 were originally owned by the one Nivrutti, the father of the respondent Nos.2 to 4 and the brother of the deceased defendant No.3. It is alleged that the father of the respondent Nos.2 to 4 and the 3rd defendant executed a sale deed in favour of the 1st appellant on 08th May, 1964 in respect of suit lands as

well as the said land bearing No.182/13. It is contended that the suit lands alongwith land bearing Survey No.182/13 have been in possession of the appellants as owners. By amending the written statement the appellants also introduced a plea of adverse possession on the ground that they have been in possession of the suit lands since 1964. A contention was raised that the appellants have perfected their title to the suit lands by adverse possession.

4. The deceased 3rd defendant filed written statement supporting the appellants and contending that he alongwith his brother Nivrutti executed the sale deed dated 08th May, 1964 in favour of the present appellants.

5. The learned trial Judge held that the appellants have proved their adverse possession of the suit property. The learned trial Judge however held that the appellants have failed to substantiate their contention that they have purchased the suit lands by a registered sale deed dated 08th May, 1964 from father of the respondent Nos.2 to 4 and the 3rd defendant. As the trial Court found that the appellants have perfected their title to the suit land by adverse possession, the decree of possession was denied to the respondents. The

trial Court dismissed the suit.

6. Being aggrieved by the dismissal of the suit the respondents preferred an appeal before the District Court. The District Court negatived the plea of adverse possession and therefore, proceeded to pass a decree for possession.

7. The learned counsel for the appellants have invited my attention to the pleadings of the parties. He submitted that the very fact that the appellants were in possession of the suit land from 08th May, 1964 establishes that on the date of filing the suit by the respondents i.e on 31st October, 1980, the appellants had perfected their title to the suit property by adverse possession. He submitted that issue of bar of limitation was not be framed by the trial Court. He submitted that the Court was under an obligation to decide the issue of limitation in view of section 3 of the Limitation Act, 1963. He submitted that the suit was clearly time barred. He submitted that all ingredients of the adverse possession were established by the appellants. He submitted that possession of the appellants is adverse from the year 1964 and as the suit has not been filed within 12 years from 1964, the same is admittedly time barred. He submitted that this

important aspect has been overlooked by the Appellate Court.

8. I have carefully considered the submissions. In the present case the respondents by amending the plaint sought possession on the ground of title. The suit will be therefore governed by Article 65 of the Limitation Act, 1963 which provides that the period of limitation of 12 years shall commence from the date on which possession of the defendant becomes adverse. Therefore, the appellants were under obligation to prove that their possession was adverse to the knowledge of the respondents from the year 1964.

9. I have perused the written statement of the appellants. In the written statement it is contended that though a sale deed was executed in their favour by the 3rd defendant and Nivrutti, due to mistake, incorrect survey numbers have been mentioned in the sale deed and the respondents were trying to take undue advantage of the said error. It is alleged that the respondents have never obstructed the possession of the appellants

10. In this context the Appellate Court has observed that the second appellant in his evidence has not

asserted and stated the exact date from which his adverse possession over the suit property commenced. The Appellate Court observed, and in my view rightly that the plea of adverse possession set up by the appellants in the pleadings was not specific. The Appellate Court after appreciating the evidence on record observed that the appellants have failed to lead evidence to show as to from what date their possession became adverse.

11. If the written statement of the appellants is perused, there is no specific plea as regards knowledge of the respondents of the alleged possession of the appellants from the year 1964. In this view of the matter, the Appellate Court has rightly rejected the plea of adverse possession.

12. Once it is held that the appellants-defendants failed to establish that they have perfected their title by adverse possession, the decree for possession must follow. Unless it is clearly established by the appellants that the alleged adverse possession commenced from a particular date, issue of bar of limitation does not arise. The period of limitation in a suit governed by Article 65 of the Limitation Act, 1963 starts from the date on which possession of the defendant becomes

adverse. Therefore, no fault can be found if the Appellate Court has not specifically considered the issue of limitation. However, as pointed out earlier, the plea of adverse possession has been examined by the Appellate Court in detail.

13. No substantial question of law arises. The Second Appeal is accordingly dismissed. There will be no orders as to costs. The decree for possession shall not be executed for a period of three months from today.

JUDGE